

**Iowa Department of Natural Resources  
Environmental Protection Commission**

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<b>ITEM</b>	<b>9</b>	<b>INFORMATION</b>
<b>TOPIC</b>	<b>Review of Regulatory Options for Addressing the Vacatur of CAMR</b>	

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At the October 2008 Commission meeting, the Department presented an information item proposing rule changes to remove from the state air quality rules EPA's Clean Air Mercury Rule (CAMR) provisions that the United States Court of Appeals for the District of Columbia Circuit (the D.C. Court) vacated. The D.C. Court found CAMR to be unauthorized under the federal Clean Air Act (CAA). Instead of proceeding with the rulemaking process, the Commission requested that the Department provide information regarding state regulatory options for addressing the vacatur of CAMR. This request was reiterated during the November 2008 Commission meeting.

The attached summary presents for the Commission's consideration possible regulatory options for addressing the federal vacatur of CAMR. The summary also includes pros and cons associated with each option and additional considerations that may be relevant in the decision making process.

The Department is recommending that option 2 be selected. As indicated in the attached summary, option 2 would align the state's removal of the CAMR provisions from the administrative rules with the federal vacatur of CAMR, thereby providing regulatory certainty for affected sources. Nationwide, the EPA administered cap and trade program for mercury, which was the most significant component of the CAMR provisions, no longer exists. Although removal of the CAMR provisions would remove the requirement to continue monitoring mercury emissions, nearly all CAMR-affected units have indicated that they will continue to monitor mercury emissions.

Please see the attached background document for more information on the vacated CAMR provisions, the D.C. Court decision, and the impacts of the vacatur.

Based on direction provided by the Commission after their review and consideration of the options, the Department will bring a Notice to the Commission for decision at a future Commission meeting.

Jim McGraw  
Environmental Program Supervisor  
Program Development Section, Air Quality Bureau  
Memo date: December 22, 2008

## Regulatory Options for Addressing CAMR Vacatur

Option	Pros	Cons	Notes
1. Retain Clean Air Mercury Rule (CAMR) provisions in Iowa Administrative Code (IAC) until EPA promulgates a new rule.	-CAMR provisions can be removed from IAC at same time new EPA rules are adopted.	-Regulatory uncertainty for Electrical Generating Units (EGUs) and other stakeholders. -EGUs will have to request variances from vacated requirements. Staff time will be used to process variance requests. -EPA technical amendments for Hg monitoring have not been adopted into IAC.	-No environmental benefit gained by waiting to remove CAMR provisions from IAC. - Nationwide, EPA administered cap and trade program for Hg no longer exists.
2. Remove CAMR provisions from IAC.	-Aligns with federal rule vacatur. -Provides regulatory certainty for EGUs.	-Facilities may not continue monitoring Hg emissions.	-Nationwide, EPA administered cap and trade program for Hg no longer exists. -Nearly all CAMR-affected units have indicated they will continue to monitor Hg.
3. Remove CAMR provisions from IAC and require emissions monitoring.	-Removes CAMR cap and trade provisions. -Retains some Hg emissions monitoring.	-Adoption will require removal of reference to EPA submittal requirements. -Additional staff will be needed to QA data, review/approve plans, develop database and store data. - Technical problems with EPA monitoring methods still exist.	-Hg emissions data could be useful for future planning activities. -Unknown whether new EPA rule would have similar monitoring requirements. -EPA is not fixing current monitoring method problems.
4. Remove CAMR provisions from IAC and require emissions monitoring but set CAMR caps for Iowa as new Hg emissions limits.	-Same as Option 3. -Caps Hg emissions from Iowa EGUs.	-Same as option 3. -Connection between Iowa EGU emissions and Hg deposition in Iowa is not established. -Future federal Hg emission limits and control equipment requirements will be different and may include limits for other HAPs.	-Hg emissions data would be used to demonstrate compliance with EGU caps. However, problems with EPA monitoring methods still exist.
5. Remove CAMR provisions from IAC and adopt statewide cap and trade program.	-Allows EGUs to buy Hg allowances or control emissions. -Hg emissions from EGUs would be capped.	-Limited pool of Hg allowances could mean controls would always be cheaper. -Significant resources, including economics experts and IT resources, needed to administer program.	-A regional cap and trade program would likely be more effective. -Unknown whether other states would participate.

**Additional Considerations:**

- 1) Regardless of option selected, the state rule (567 IAC 22.3(5)) allowing modification of permits to mitigate excessive Hg deposition from a major source will be retained. This provision allows the Department to evaluate possible major source contributions to ecosystems found to have high levels of mercury deposition.
- 2) Mercury controls have been installed on one EGU and are still being operated despite the vacatur of CAMR. Some co-benefits from the control of NOx and SO2 emissions from the implementation of Phase I of CAIR will occur statewide at EGUs where controls have been installed for CAIR and are being operated. “Co-benefits” mean that mercury emissions will also be reduced at EGUs controlling for NOx and SO2.
- 3) The vacatur of the New Source Performance Standards (NSPS) for mercury emissions from coal-fired boilers (40 CFR Part 60, Subpart Da) is not impacted since 112(g) currently applies to new EGUs. Under Clean Air Act (CAA) section 112(g), if EPA has not set applicable emission limits for a category of listed hazardous air pollutant (HAP) sources, construction of a new major source or modification of an existing major source in the source category may not occur unless the Administrator (or delegated state or local agency) determines on a case-by-case basis that the unit will meet standards equivalent to maximum achievable control technology (MACT). Any EGU that has not completed construction prior to the Court mandate on March 14, 2008, may potentially be subject to case-by-case MACT under CAA section 112(g). Since EPA has delegated authority to the DNR to implement and enforce 112(g) in Iowa, construction permit staff is evaluating HAP emissions and establishing MACT for new EGUs.
- 4) New federal rules will likely require control of additional HAPs from EGUs, such as organic HAPs, particulate metals, and acid gases. If the state imposes mercury limits now, owners and operators of EGUs may later be required to conduct costly retrofitting of different controls than would be required for controlling mercury alone.

## **Attachment – CAMR Background Document**

### **CAMR Regulations**

In May 2005, EPA promulgated the Clean Air Mercury Rule (CAMR). The purpose of CAMR was to permanently cap and reduce mercury emissions from coal-fired electrical steam generating units (EGUs). The first phase of CAMR was to begin in 2010. The second phase of CAMR was to begin in 2018.

With the assistance of a stakeholder workgroup, the Department chose to adopt EPA's cap and trade programs for regulating mercury emissions from EGUs. EPA subsequently approved the state's CAMR regulations into Iowa's State Implementation Plan (SIP) in 2007.

Under the CAMR cap and trade program, EPA provides the state with a "budget" of mercury allowances, which the Department then allocates to each affected coal-fired EGU. Each allowance is equal to one ounce of mercury emissions. Upon allocation of mercury allowances, coal-fired EGUs can then trade them through an EPA-managed trading program. At the end of each year, each affected EGU must hold one allowance for each ounce of mercury emitted.

CAMR was not intended to reduce emissions at specific EGUs, but instead was intended to guarantee national emissions reductions. The EGUs were allowed the flexibility to determine the most appropriate method of compliance by securing allowances, reducing emissions, or instituting some combination of these approaches.

### **CAMR Vacatur**

The D.C. Court issued its decision to vacate CAMR on February 8, 2008, and issued the mandate making the decision final and effective on March 14, 2008. The D.C. Court's decision is available on-line at <http://pacer.cadc.uscourts.gov/docs/common/opinions/200802/05-1097a.pdf>

EPA will not be operating the CAMR trading program, at least not as originally planned. Other federal CAMR regulations separate from the trading program were also vacated in the D.C. Court's decision.

The vacatur of CAMR also means that section 112(g) applies to new EGUs. As part of the D.C. Court's decision to vacate CAMR, the D.C. Court found that EPA failed to follow the comprehensive de-listing process for EGUs required under section 112.

Section 112 of the CAA includes provisions to require MACT for major sources of HAP emissions in the event that EPA does issue MACT standards. Under section 112(g), if EPA has not set applicable emission limits for a category of listed HAP sources, construction of a new major source or modification of an existing major source in the source category may not occur unless the Administrator (or delegated state or local agency) determines on a case-by-case basis that the unit will meet standards equivalent to MACT. EPA has delegated authority to the Department to implement and enforce 112(g) in Iowa.

Under CAA section 112(j), if EPA fails to promulgate a standard for a listed category or subcategory by the dates established in the CAA, states must conduct a case-by-case MACT

determination for each subject source category or subcategory and include the MACT requirements in each facility's Title V Permit. However, section 112(j) does not apply to EGUs at this time because it was not among the source categories listed by EPA when it implemented section 112 and the MACT program.

### **Department Activities to Date**

On June 19, 2008, the Department notified in writing owners and operators of CAMR-affected EGUs that they were not required to submit a CAMR permit application by the July 1, 2008, deadline. They were also notified that they were not required to comply with the upcoming mercury monitoring deadlines, including the January 1, 2009, deadline for mercury monitoring certifications. However, the Department recommended that owners and operators of CAMR-affected EGUs proceed with their mercury monitoring programs until such time as final rules to remove the CAMR-related provisions are adopted and effective in the IAC.

The Department further discussed the implications of the CAMR vacatur with stakeholders at Air Quality Client Contact meetings on August 14 and November 13, 2008. The Department also hosted a conference call with EGUs to discuss both CAMR and the Clean Air Interstate Rule (CAIR) on November 5, 2008.